



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

[REDACTED]

PRELIMINARY RECITALS

Pursuant to a petition filed October 30, 2015, under Wis. Admin. Code, §HA 3.03(1), to review a decision by Milwaukee Enrollment Services to reduce FoodShare benefits (FS), a hearing was held on December 22, 2015, by telephone. A hearing set for November 24, 2015 was rescheduled at the petitioner's request.

The issue for determination is whether the agency correctly changed petitioner's utility allowance at her renewal.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

I

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]
Milwaukee Enrollment Services
1220 W. Vliet Street
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner receives FS as a one-person household. She received \$190 in FS in October, 2015.
3. Petitioner had a review in October. She reported that her rent, which is government subsidized, was \$192 monthly. Her heat expense is included in the rent but she pays electricity.

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4. The Department changed its policy toward counting shelter expenses in the FS determination. Previously all FS households received a standard utility expense. The policy changed to provide that only expenses actually paid by the household can be counted if the household did not receive energy assistance in the past year. Petitioner received only a \$119 shelter expense in her November, 2015 FS calculation. As a result of the change, petitioner's FS decreased to \$87 effective November 1, 2015.
 5. Petitioner received a WHEAP electrical assistance payment of \$114 on October 30, 2014. She did not receive a heating assistance payment in 2014 because her heat was included in her rent.
 6. FS were continued at the higher level pending this decision.

DISCUSSION

In determining the amount of FS to be issued each month, the county must budget all of the recipient's nonexempt income. 7 C.F.R. §273.9(b). From that income, certain deductions are allowed. The deductions include a standard deduction, which currently is \$155 per month. 7 C.F.R. §273.9(d)(1); FS Handbook, Appendix 4.6.2. Another deduction is the earned income deduction, which equals 20% of the household's total earned income. 7 C.F.R. §273.9(d)(2); FS Handbook, App. 4.6.3. A third possible deduction is for medical expenses exceeding \$35 in a month for elderly or disabled persons. 7 C.F.R. §273.9(d)(3); FS Handbook, App. 4.6.4. A fourth deduction is for child/dependent care. 7 C.F.R. §273.9(d)(4); FS Handbook, App. 4.6.6. The final deduction is for shelter expenses; the deduction is equal to the excess expense above 50% of net income remaining after other deductions. 7 C.F.R. §273.9(d)(5); FS Handbook, App. 4.6.7.

In October, 2015, petitioner's shelter deduction was \$414.98 resulting from rent of \$171 and a utility expense of \$458. For November she received just an \$89.37 shelter deduction because her rent increased to \$192 but her utility expense was just \$119 for telephone and electricity.

Prior to the federal 2014 Farm Bill the Wisconsin Department of Administration issued an annual energy assistance payment of \$1 to all FS households who were not already receiving energy assistance. This policy allowed Wisconsin to grant all FS households the Heating Standard Utility Allowance (HSUA), currently \$458. Actual utility usage did not matter.

The 2014 Farm Bill changed this practice. The 2014 Farm Bill requires a household to have received an energy assistance payment of greater than \$20 to receive the \$458 utility standard. 7 U.S.C. 2014(e)(6)(C)(ii)(I). The FS Handbook, App. 4.6.7.3 now reads:

FoodShare households that have received a WHEAP or LIHEAP payment greater than \$20 in the current month or within the past 12 months will receive the HSUA. WHEAP or LIHEAP payments may be received at any address (in or out of state) in the current month or the past 12 months.

Households that have not received WHEAP or LIHEAP will receive the appropriate utility standard based on the utility obligations(s) incurred by the household....

When petitioner's FS review was done in October, 2015, the worker obtained from the WHEAP agency a letter stating that petitioner's WHEAP electrical assistance was approved on September 11, 2014, which was more than 12 months prior to the review. However, I did some checking, and although petitioner applied for WHEAP on September 11, 2014 and likely was approved that day, the payment actually was not made until October 30, 2014. Thus the payment was made less than 12 months before the review.

[REDACTED]

I conclude that petitioner should receive the full HSUA for her FS because she received a WHEAP payment within 12 months prior to her FS review. I checked with [REDACTED] after the hearing and she agreed that even though the WHEAP payment was for electricity only, the policy nevertheless would allow petitioner to receive the full HSUA. As noted by petitioner, she has received that same WHEAP payment yearly and expects to receive it again this year, and thus she should not be penalized because she applied for WHEAP early in 2014 (her WHEAP appointment is scheduled in January this season).

I note finally that petitioner also questioned her medical expenses in the FS calculation. She provided a number of bills at the hearing, but I am unable to tell whether those expenses already were used or were eligible to be used (I note that the expenses provided by petitioner appear to total less than the expense the agency already is using). [REDACTED] was going to address the medical expenses outside the hearing.

CONCLUSIONS OF LAW

The agency incorrectly reduced petitioner's utility allowance when it completed her review because petitioner received a WHEAP payment within 12 months of the review.

THEREFORE, it is

ORDERED

That the matter be remanded to the agency with instructions to re-determine petitioner's FS for November 1, 2015 and thereafter by giving her the full HSUA in the FS calculation. The agency shall take the action and issue appropriate supplemental FS, if any are owed, within 10 days of this decision.

REQUEST FOR A REHEARING


You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

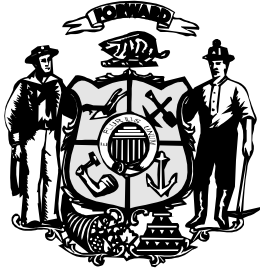
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).


The process for Circuit Court Appeals may be found at Wis. Stat., §§227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 12th day of January, 2016

\sBrian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 12, 2016.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability